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Legend

Taxpayer =

Administrator =

State =

Statute =

Plan A =

Plan B =

Plan C =

Plan D =

Plan E =

Plan F =

Plan G =

Dear :

This is in reply to a letter dated February 27, 2013, and subsequent correspondence from your authorized representatives, requesting rulings on behalf of Taxpayer, concerning the federal income tax treatment under § 104(a)(1) of the Internal Revenue Code (Code) of certain disability retirement benefits paid under Plans A, B, C, D, E, F and G.

Taxpayer is an independent board and trustee of the seven Plans covered by this ruling. Taxpayer has established and maintained the Plans pursuant to the laws of the State. The Administrator is responsible for the day-to-day operation and administration of the seven Plans. Taxpayer determines, in accordance with established rules and procedures, whether an individual has become disabled and is eligible for benefits under the relevant Plan due to the member's disability. The disability benefits paid by each of the Plans are determined based on the benefit formula that applies to the Plan and the member and are paid to the member until normal retirement age. Section 19-2-406(4) of the Statute requires that disability retirement under all the Plans must be converted to a service retirement benefit when the member attains normal retirement age under the Plan. Accordingly, none of the seven Plans provide for disability benefits beyond the member's normal retirement age.

Plan A

Plan A, established under § 19-3 of the Statute, is a tax-qualified multiple-employer plan that provides retirement, disability, and death benefits to eligible employees of the State, the State university system, local governments, and certain school districts within the State. Membership in Plan A is mandatory and a condition of employment for eligible employees. In addition, § 19-3-412 of the Statute permits certain newly hired employees and elected officials to elect to become active members of Plan A. All eligible employees who are members of Plan A are required to contribute toward the cost of their benefits under Plan A. In addition to retirement benefits, Plan A provides members and their beneficiaries with disability and death benefits.

Under Plan A, a member who has completed at least 5 years of membership service is eligible to qualify for disability retirement benefits, if certain conditions are satisfied. Plan A does not distinguish between duty-related and non-duty related disability. Death benefits under Plan A are the same whether the death is duty-related or not-duty related. §§ 19-3-1201, 19-3-1202 of the Statute.

Section 19-3-1605 of the Statute sets forth the cost of living adjustment rates that apply to certain Plan A benefits.

Plan B

Plan B, established under § 19-5 of the Statute, is a tax-qualified defined benefit plan that provides retirement, disability, and death benefits to all State district court judges, justices of the State Supreme Court, and the Chief and associate water judges and their beneficiaries. § 19-5-301 of the Statute. Membership in Plan B is mandatory and a condition of employment for covered individuals.

Pursuant to § 19-5-601 of the Statute, Plan B provides members and their beneficiaries with non-duty and duty-related disability and death benefits. Under Plan B, a member who incurs a non-duty related disability receives a disability retirement benefit that is the actuarial equivalent of the member's service retirement under Plan B at the time of disability. § 19-5-601(1) of the Statute.

Pursuant to § 19-5-601(2) of the Statute, Plan B provides a member who is disabled as a direct result of any service or duty for the State judiciary a disability retirement benefit equal to the greater of 50% of the member's current salary or 50% of the member's highest average compensation. If a member selected one of the optional forms of benefits described in § 19-5-701, Plan B would provide an annuity to the member's contingent annuitant if the member dies while receiving duty-related disability benefits.

Plan B also provides separate duty-related and non-duty related death benefits. According to § 19-5-801 of the Statute, the designated survivor of a Plan B member who dies as a direct and proximate result of injury received in the course of the Plan B member's service or duty is paid a survivorship benefit.

Sections 19-5-901 and 19-5-902 of the Statute set forth the cost of living adjustment rates that apply to certain Plan B benefits.

Plan C

Plan C, established under § 19-6 of the Statute, is a tax-qualified defined benefit plan that provides retirement, disability, and death benefits to all State Highway Patrol personnel and their beneficiaries. According to § 19-6-301 of the Statute, membership in Plan C is

mandatory and a condition of employment for all members of the State highway patrol, including supervisors and assistant supervisors.

Pursuant to § 19-6-601 of the Statute, Plan C provides members and their beneficiaries with non-duty and duty-related disability and death benefits. Under Plan C, a member who incurs a non-duty disability receives a disability retirement benefit that is the actuarial equivalent of the service retirement under Plan C at the time of disability. § 19-6-601(1) of the Statute.

As required by § 19-6-601(2) of the Statute, Plan C provides a member who is disabled as a direct result of the member's service in the line of duty a disability retirement benefit equal to: (1) 50% of the member's highest average compensation, if the member's disability occurs before completing 20 years of membership service, or (2) 2.5% of the member's highest average compensation for each year of service credit, if the member's disability occurs after completing 20 years or more of membership service.

Upon the death of a member who is receiving disability retirement benefits from Plan C, § 19-6-601(3) of the Statute requires Plan C to continue to provide disability retirement benefits to the member's surviving spouse or dependent children.

Plan C also provides separate duty-related and non-duty related death benefits. According to § 19-6-901 of the Statute, the surviving spouse or dependent child of an active member of Plan C who dies as a direct and proximate result of injury received in the course of the member's service is paid a monthly benefit from Plan C equal to 50% of the member's highest average compensation. Under § 19-6-902 of the Statute, the surviving spouse or dependent child of an active member of Plan C who dies before the member's retirement age are paid a survivorship benefit that is the actuarial equivalent of the member's early retirement benefit under Plan C.

Section 19-6-710 of the Statute sets forth the cost of living adjustment rates that apply to certain Plan C benefits.

Plan D

Plan D, established under § 19-7 of the Statute, is a tax-qualified multiple-employer defined benefit plan that provides retirement, disability, and death benefits to criminal investigators, detention, and all State sheriffs and their beneficiaries. According to § 19-7-301 of the Statute, membership in Plan D is mandatory and a condition of employment for all sheriffs, investigators, or detention officers, unless the eligible employee was a member of Plan A and chose to remain a member of Plan A during the relevant period. All eligible employees who are members of Plan D are required to contribute toward the cost of their benefits under Plan D.

Pursuant to § 19-7-601 of the Statute, Plan D provides members and their beneficiaries with non-duty and duty-related disability and death benefits. Under Plan D, a member who incurs a non-duty disability receives a disability retirement benefit that is the actuarial equivalent of the service retirement under Plan D at the time of disability. § 19-7-601(1) of the Statute.

Section 19-7-601(2) of the Statute requires that Plan D provide a member who is disabled as a direct result of the member's service in the line of duty a disability retirement benefit equal to: (1) 50% of the member's highest average compensation if the member's disability occurs before the member completes 20 years of membership service, or (2) 2.5% of the member's highest average compensation for each year of service credit if the member's disability occurs after the members completes 20 years or more of membership service.

Plan D, pursuant to § 19-7-901 of the Statute, provides an annuity to the member's contingent annuitant if the member dies while receiving duty-related disability benefits from Plan D and the member selected one of the optional forms of benefits described in § 19-7-1001 of the Statute.

Plan D also provides separate duty-related and non-duty related death benefits. According to § 19-7-901(3) of the Statute, the beneficiary of an active member who the Taxpayer determined to have died as direct and proximate result of injury received in the course of the member's service is paid a monthly benefit equal to 50% of the member's highest average compensation.

Under Plan D, the beneficiary of an active member who dies for a non-duty related reason before reaching retirement age may elect to receive the member's accumulated contributions in a lump sum payment or a survivor benefit equal to 2.5% of the highest average compensation for each year of service credit, actuarially reduced from age 65 or from the date the member would have completed 20 years of membership service, using the factor that provides the greater benefit. § 19-7-901(1) and (2)

Section 19-7-711 of the Statute sets forth the cost of living adjustment rates that apply to certain Plan D benefits.

Plan E

Plan E, established under § 19-8 of the Statute, is a tax-qualified multiple-employer defined benefit plan that provides retirement, disability and death benefits to all persons employed as peace officers. According to § 19-8-301 of the Statute, membership in Plan E is mandatory and a condition of employment as long as the member is employed as a peace officer. All eligible employees who are members of Plan E are required to contribute toward the cost of their benefits under Plan E.

Pursuant to § 19-8-701 of the Statute, Plan E provides members and their beneficiaries with non-duty and duty-related disability and death benefits. Under Plan E, a member who incurs a non-duty disability receives a disability retirement benefit that is the actuarial equivalent of the service retirement under Plan E at the time of disability. § 19-8-701(1) of the Statute.

Section 19-8-701(2) of the Statute requires that Plan E provide a member who is disabled as a direct result of the member's service in the line of duty a disability retirement benefit equal to: (1) 50% of the member's highest average compensation if the member's disability occurs before completing 20 years of membership service, or (2) 2.5% of the member's highest average compensation for each year of service credit if the member's disability occurs after completing 20 years or more of membership service. A member must have at least five years of service to be eligible for duty-related disability benefits under Plan E.

Plan E provides an annuity to the member's contingent annuitant if the member dies while receiving duty-related disability benefits from Plan E and the member selected one of the optional forms of benefits described in § 19-8-801 of the Statute.

Plan E also provides separate duty-related and non-duty related death benefits. According to § 19-8-1001 of the Statute, the designated beneficiary of a member who the Taxpayer determines died as a direct and proximate result of injury received in the course of the member's service is paid a monthly survivorship benefit equal to 50% of the member's highest average compensation. However, according to § 19-8-1001 of the Statute, in the case of a member who completed more than 25 years of service credit before his death, the survivorship benefit must equal 2% of the member's highest average compensation for each year of service credit.

Section 19-8-1105 of the Statute sets forth the cost of living adjustment rates that apply to certain Plan E benefits.

Plan F

Plan F, established under § 19-9 of the Statute, is a tax-qualified multiple-employer contributory defined benefit plan that provides retirement, disability and death benefits to eligible police officers employed by first- and second-class cities, and other cities that adopt Plan F. Membership in Plan F is mandatory and a condition of employment for all police officers who are employed by a city that participates in Plan F. All eligible employees who are members of Plan F are required to contribute toward the cost of their benefits under Plan F.

Plan F does not distinguish between duty-related and non-duty related disability or death benefits. §§ 19-9-902, 19-9-903 and 19-9-909 of the Statute. In addition, according to §

19-9-1101 of the Statute, death benefits under Plan F are the same whether the death is duty-related or non-duty related.

Section 19-9-1009 of the Statute sets forth the cost of living adjustment rates that apply to certain Plan F benefits.

Plan G

Plan G, established under § 19-13 of the Statute, is a tax-qualified multiple-employer defined benefit plan that provides retirement, disability, and death benefits to firefighters employed by first and second-class cities, other cities or rural fire districts that adopt Plan G. Membership in Plan G is mandatory and a condition of employment for all full-paid firefighters who are employed by a city that participates in Plan G and firefighters hired by the State Air National Guard on or after a certain date. § 19-13-301. All eligible employees who are members of Plan G are required to contribute toward the cost of their benefits under Plan G.

Plan G does not distinguish between duty-related and non-duty related disability or death benefits. §§ 19-13-802, 19-13-803 and 19-13-902 of the Statute.

Section 19-13-1010 of the Statute sets forth the cost of living adjustment rates that apply to certain Plan G benefits.

Section 104(a)(1) of the Code excludes from gross income amounts that are received by an employee under a workmen's compensation act or under a statute in the nature of a workmen's compensation act that provides compensation to employees for personal injuries or sickness incurred in the course of employment. Section 1.104-1(b) of the Income Tax Regulations provides that the exclusion from income of amounts described in section 104(a)(1) also applies to compensation which is paid under a workmen's compensation act to the survivor or survivors of a deceased employee. This exclusion, however, is not available and does not apply to a retirement pension or annuity to the extent that it is determined by reference to the employee's age or length of service, or the employee's prior contributions, even though the employee's retirement is occasioned by an occupational injury or sickness.

Accordingly, based on the representations made, and authorities cited above, we conclude as follows:

(1) Disability benefits paid under Plans B (§ 19-5-601(2) of the Statute) to a member who suffers a disability due to a job-related illness or injury will not be considered gross income to the member (or the member's survivors under § 19-5-701 of the Statute) under section 104(a)(1) of the Code, until such benefits convert to normal service retirement pursuant to § 19-2-406(2) of the Statute, at which point the entire benefit will be taxable

and subject to basis recovery. Non-duty related disability benefits under Plan B (§ 19-5-601(1) of the Statute) are taxable to the member (or the member's survivors).

(2) Disability benefits that do not exceed 50% of the member's highest average compensation that are paid under Plan C (§ 19-6-601(2)), Plan D (§ 19-7-601(2)), and Plan E (§ 19-8-701(2)) to a member who suffers a disability due to a job-related illness or injury will not be considered gross income to a member (or the member's survivors) under section 104(a)(1) of the Code, until such benefits convert to normal service retirement pursuant to § 19-2-406(2) of the Statute, at which point the entire benefit will be taxable and subject to basis recovery. Amounts that exceed 50% of the member's highest average compensation are taxable under Plans C, D and E to the member (or member's survivors).

(3) All disability benefits (whether or not duty-related) under Plan A (§ 19-3-1002), Plan F (§§ 19-7-902; 19-9-903) and Plan G (§ 19-13-802) paid to a member (or the member's survivors) will be taxable income to the member (or the member's survivors), except to the extent basis recovery is available.

(4) Death benefits that do not exceed 50% of the member's highest average compensation and that are paid under Plan C (§ 19-6-901), Plan D (§ 19-7-901(3)), and Plan E (§ 19-8-1001) to survivors of members who die as a result of the performance of duty will not be taxable income to the recipient under section 104(a)(1) of the Code.

(5) All death benefits (whether or not duty-related) under Plans A, F, and G paid to a member will be taxable income to the member's survivors, except to the extent basis recovery is available.

(6) Death benefits paid under Plans B, C, D and E to a member whose death is not due to a job-related illness or injury will be taxable income to the member's survivors, except to the extent basis recovery is available.

(7) Annual cost of living adjustments paid under Plans A, B, C, D, E, F and G to a member will not be considered gross income to the member to the same extent that the underlying duty-related disability retirement payments or survivor benefits are not considered gross income to the member under section 104(a)(1) of the Code.

No opinion is expressed or implied concerning the federal tax consequences under any other provision of the Code or regulations other than those specifically stated above.

These rulings are directed only to the Taxpayer who requested them. Section 6110(k)(3) of the Code provides that they may not be used or cited as precedent.

Sincerely

Harry Beker
Chief, Health and Welfare Branch
Office of Division Counsel/Associate
Chief Counsel (Tax Exempt & Government
Entities)